IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1999 Term

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No. 25806

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STATE OF WEST VIRGINIA EX REL.
CAROLYN SHREWSBERRY and HERNDON PROCESSING COMPANY,
a West Virginia corporation,
Petitioners,

vs.

HONORABLE JOHN S. HRKO, Judge of the
Circuit Court of Wyoming County, West Virginia, and
BOBBIE SHREWSBERRY,
Respondents.

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Petition for Writ of Prohibition

WRIT GRANTED

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Submitted: March 9, 1999
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The Opinion of the Court was delivered PER CURIAM.

CHIEF JUSTICE STARCHER concurs and reserves the right to file a concurring opinion.

JUSTICE MCGRAW, deeming himself disqualified, did not participate in the decision of the Court.

JUDGE FRED RISOVICH, II, sitting by special assignment, dissents.

SYLLABUS BY THE COURT

1. "An adjudication by a court having jurisdiction of the subject-matter and the parties is final and conclusive, not only as to the matters actually determined, but as to every other matter which the parties might have litigated as incident thereto and coming within the legitimate purview of the subject-matter of the action. It is not essential that the matter should have been formally put in issue in a former suit, but it is sufficient that the *status* of the suit was such that the parties might have had the matter disposed of on its merits. An erroneous ruling of the court will not prevent the matter from being *res judicata*." Syllabus Point 1, *Sayre's Adm'r v. Harpold*, 33 W.Va. 553, 11 S.E. 16 (1890).

2. "Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action." Syllabus Point 4, *Blake v. Charleston Area Medical Center*, 201 W.Va. 469, 498 S.E.2d 41 (1997).

Per Curiam:

In this petition for a writ of prohibition we are asked to address a situation where two individuals have been appointed, in two separate counties, as administrators of the estate of a decedent. The petitioner, the ex-wife of the decedent, was appointed by the Raleigh County Commission, while the respondent, the decedent's mother, was appointed by the Wyoming County Commission.

The appointment decision of the Raleigh County Commission was appealed to the Circuit Court of Raleigh County. The Circuit Court of Raleigh County subsequently issued a final order affirming the petitioner's qualifications to act as administrator of the decedent's estate, and the order was not appealed. The petitioner then sought to void the respondent's appointment in the Circuit Court of Wyoming County. The Circuit Court of Wyoming County declined to void the appointment, and declined to give preclusive effect to the order of the Circuit Court of Raleigh County. The petitioner then sought relief from this Court to prohibit the Circuit Court of Wyoming County from continuing to act in excess of its jurisdiction.

After consideration of the arguments of the parties, we find that the order of the Circuit Court of Raleigh County constitutes a final adjudication on the merits of the petitioner's qualifications to act as administratrix of the decedent's estate. Any attempt by the respondent to collaterally challenge those qualifications in Wyoming County is barred by principles of *res judicata*.

We therefore grant the requested writ of prohibition.

I.

The petitioner, Carolyn Shrewsberry, and Eddie Dean Shrewsberry were married in 1980, and were divorced on July 17, 1996. The petitioner is the biological mother and custodian of eight of Mr. Shrewsberry's nine children. She resides in Raleigh County, West Virginia. A ninth child of Mr. Shrewsberry allegedly lives in McDowell County, West Virginia.[1]

On February 6, 1997, Mr. Shrewsberry sustained fatal injuries in an accident at his place of employment in Wyoming County and was taken to a Raleigh County hospital where he was pronounced dead on arrival.[2] Mr. Shrewsberry's death certificate and an obituary in a local newspaper indicated his place of residence was in Raleigh County.

The petitioner, on February 13, 1997, appeared before the Raleigh County Commission. In the Administrator's Bond and Fiduciary Record filed with the Raleigh

[1]While the record in the court below is unclear, it seems that no representative has made an appearance for this ninth, allegedly illegitimate, child. The petitioner, however, steadfastly claims that Mr. Shrewsberry fathered only eight children.

[2] Mr. Shrewsberry's death certificate lists "multiple crushing injuries" as a consequence of being "struck by boom [of a crane] at worksite." The "approximate interval between onset and death" was listed as "seconds."

It appears that, as a result of this workplace accident, both the petitioner and the respondent have filed "deliberate intent" actions against Mr. Shrewsberry's employer. *See W.Va. Code*, 23-4-2 [1994].

County Commission, the petitioner represented that she was the wife, next of kin, and sole heir to Mr. Shrewsberry. On that date the Raleigh County Commission appointed the petitioner as the administratrix of Mr. Shrewsberry's estate.

Three weeks later, on March 7, 1997, Mr. Shrewsberry's mother, respondent Bobbie Shrewsberry, appeared before the Wyoming County Commission and sought to be appointed as administratrix of Mr. Shrewsberry's estate. The respondent is a resident of Wyoming County. On the paperwork filed with the Wyoming County Commission, the respondent listed Mr. Shrewsberry's nine children as the heirs and distributees of his estate. The respondent was also appointed as the administratrix of Mr. Shrewsberry's estate.

The respondent then challenged the petitioner's appointment as administratrix by filing objections with the Raleigh County Commission. The objections were referred to a fiduciary commissioner, who on October 14, 1997 issued a report finding that the petitioner was not Mr. Shrewsberry's wife at the time of his death, and that she was not his sole heir. The fiduciary commissioner concluded that the petitioner had sworn falsely to wrongfully obtain her appointment as the administratrix of Mr. Shrewsberry's estate, and recommended that the appointment be voided.

In response to the fiduciary commissioner's findings, the petitioner sought permission to amend her Administrator's Bond and Fiduciary Record. The petitioner contended that she had not sworn falsely, but rather that she had made mistakes in completing the paperwork presented to her by a clerk for the Raleigh County

Commission. In an affidavit filed with the Raleigh County Commission, the petitioner indicated that she had no memory of being asked any questions about her relationship to Mr. Shrewsberry, but that she provided the clerk with a copy of her divorce papers. She indicated that her habit was to refer to herself as the "ex-wife" of Mr. Shrewsberry. The petitioner also stated that two of her children were with her at the time she completed the paperwork, and while the clerk commented on "how cute" her children were, she was never asked any questions about Mr. Shrewsberry's heirs. In sum, the petitioner argued that she did not purposely misrepresent herself as the wife and sole heir to Mr. Shrewsberry.

On November 4, 1997, the Raleigh County Commission granted the petitioner leave to amend, finding that "the distributees [of Mr. Shrewsberry's estate] are minor children residing with their natural mother" and that she was "appropriate to serve as Administratrix."

The respondent appealed the Raleigh County Commission's findings to the Circuit Court of Raleigh County. By order dated June 9, 1998, the circuit court held that the Raleigh County Commission had not abused its discretion in finding that the petitioner was qualified to be the administratrix of Mr. Shrewsberry's estate. The circuit court further held that the respondent did not have standing to challenge the petitioner's appointment, because she was not herself a distributee of Mr. Shrewsberry's estate. The respondent did not appeal the circuit court's order.

Concurrent with the respondent's appeal in the Circuit Court of Raleigh County, the petitioner filed objections with the Wyoming County Commission seeking to void the respondent's appointment for lack of jurisdiction. The petitioner contended that Mr. Shrewsberry was not a resident of Wyoming County, and did not own any real estate in Wyoming County, at the time of his death.[3] A copy of the order from the Circuit Court of Raleigh County, affirming the petitioner's appointment by the Raleigh County Commission, was later filed with the Wyoming County Commission.

By a letter dated June 23, 1998, the Wyoming County Commission allowed the respondent to continue as the administratrix of Mr. Shrewsberry's estate. The petitioner then appealed the decision to the Circuit Court of Wyoming County.

On November 5, 1998, the respondent judge, the Honorable John S. Hrko, issued an order affirming the decision of the Wyoming County Commission. Judge Hrko found that the Wyoming County Commission had not abused its discretion in appointing the respondent as the administratrix of Mr. Shrewsberry's estate.

The petitioner, on January 7, 1999, filed the instant petition for writ of prohibition with this Court. The petitioner asks that we prohibit Judge Hrko from allowing the Wyoming County Commission to act in an extra-jurisdictional fashion.

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[3]The respondent disputes these factual contentions. The respondent takes the position that Mr. Shrewsberry lived in Wyoming County in a home next-door to the respondent and her husband. Mr. Shrewsberry allegedly received his mail at this residence, and considered the Wyoming County house to be "home." Furthermore, Mr. Shrewsberry's on-the-job accident -- and therefore his death -- occurred in Wyoming County.

II.

The petitioner in this case seeks a writ of prohibition against the Circuit Court of Wyoming County, and indirectly, against the Wyoming County Commission. "The rationale behind a writ of prohibition is that by issuing certain orders the trial court has exceeded its jurisdiction, thus making prohibition appropriate." *State ex rel. Allen v. Bedell*, 193 W.Va. 32, 36, 454 S.E.2d 77, 81 (1994) (Cleckley, J., concurring). As such, "writs of prohibition . . . provide a drastic remedy to be invoked only in extraordinary situations." 193 W.Va. at 37, 454 S.E.2d at 82. More specifically,

> . . . this Court will use prohibition . . . to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance.

Syllabus Point 1, in part, *Hinkle v. Black*, 164 W.Va. 112, 262 S.E.2d 744 (1979).

The jurisdiction of a county commission over an intestate estate is established by *W.Va. Code*, 44-1-4 [1923] which states:

> When a person dies intestate the jurisdiction to hear and determine the right of administration of his estate shall be in the county court [now county commission], or clerk thereof during the recess of the regular sessions of such court, which would have jurisdiction as to the probate of his will, if there

> were one. Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife, and then such of the others entitled to distribution as such court or clerk shall see fit. If no distributee apply for administration within thirty days from the death of the intestate, such court or clerk may grant administration to one or more of his creditors, or to any other person.

*W.Va. Code*, 41-5-4 [1923] establishes the places where a will may be probated, and states in part:

> The county court [now county commission] shall have jurisdiction of the probate of wills according to the following rules:
> (a) In the county wherein the testator, at the time of his death, had a mansion house or known place of residence[.]

In this case the Raleigh County Commission found, based upon the evidence then in the record, that the petitioner was qualified to act as the administratrix of Mr. Shrewsberry's estate. The respondent then appealed that determination to the Circuit Court of Raleigh County. The circuit court found that the decision of whether the petitioner "intentionally misrepresented critical information" was a matter committed to the discretion of the Raleigh County Commission. The circuit court found that no abuse of discretion had been shown and affirmed the Raleigh County Commission's determination.

The Circuit Court of Raleigh County issued its final order on June 9, 1998. The respondent did not appeal that order, and the petitioner asserts that the principles of *res judicata* prevent the respondent from collaterally challenging that order in the Circuit Court of Wyoming County. We agree.

"Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." *Porter v. McPherson*, 198 W.Va. 158, 166, 479 S.E.2d 668, 676 (1996) (*quoting Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5, 99 S.Ct. 645, 649 n. 5, 58 L.Ed.2d 552, 559 n. 5 (1979)) (footnote omitted). The doctrine of *res judicata* is applied to avoid "the expense and vexation attending relitigation of causes of action which have been fully and fairly decided." *Sattler v. Bailey*, 184 W.Va. 212, 217, 400 S.E.2d 220, 225 (1990). In other words, "a man should not be twice vexed for the same cause." *Hannah v. Beasley*, 132 W.Va. 814, 821, 53 S.E.2d 729, 732 (1949) (citations omitted).

We have made clear that, even if a circuit court reaches an incorrect result in on an issue, the doctrine of *res judicata* bars relitigation of the issue. We stated, in Syllabus Point 1 of *Sayre's Adm'r v. Harpold*, 33 W.Va. 553, 11 S.E. 16 (1890), that:

> An adjudication by a court having jurisdiction of the subject-matter and the parties is final and conclusive, not only as to the matters actually determined, but as to every other matter which the parties might have litigated as incident thereto and coming within the legitimate purview of the subject-matter of the action. It is not essential that the matter should have been formally put in issue in a former suit, but it is sufficient that the *status* of the suit was such that the parties might have had the matter disposed of on its merits. *An erroneous ruling of the court will not prevent the matter from being res judicata.*

(Emphasis added.)

We apply a three-part test in determining whether an action is barred by the doctrine of *res judicata*:

> Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

Syllabus Point 4, *Blake v. Charleston Area Medical Center*, 201 W.Va. 469, 498 S.E.2d 41 (1997).

Applying these three factors to the instant case, we find that the respondent's attempts to collaterally attack the petitioner's qualifications in the Circuit Court of Wyoming County are barred by principles of *res judicata*. First, there has been a final adjudication in the Circuit Court of Raleigh County on the merits of whether the Raleigh County Commission abused its discretion in appointing the petitioner as administratrix of Mr. Shrewsberry's estate.[4] Second, the two actions involve the same

[4]The issue before the Circuit Court of Raleigh County was whether the petitioner, in light of her alleged misrepresentations to the Raleigh County Commission, was qualified to act as the administratrix of Mr. Shrewsberry's estate. The issues of whether the Raleigh County Commission had subject-matter jurisdiction over Mr. Shrewsberry's estate based upon his residency, whether the petitioner might be a creditor of Mr. Shrewsberry's estate as a result of entitlement to alimony, and the interests Mr. Shrewsberry's allegedly ninth illegitimate child were not addressed by either the Raleigh County Commission or the Circuit Court of Raleigh County.

parties. Third, the cause of action identified for resolution in the Wyoming County proceedings is substantially identical, namely, whether the Raleigh County Commission could find the petitioner qualified to act as the administratrix of the Estate of Mr. Shrewsberry.

The respondent's attempts to collaterally attack the decision of the Circuit Court of Raleigh County are precluded by the doctrine of *res judicata*. We therefore find that the Circuit Court of Wyoming County, by failing to acknowledge the preclusive effect of the final decision of the Circuit Court of Raleigh County, was acting in excess of its jurisdiction. A writ of prohibition is therefore warranted.

## III.

For the reasons set for forth above, we grant the requested writ of prohibition.

Writ Granted.